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### ISSUE PAPER

#### Use of Arrest and Alternatives to Arrest

*Johns Hopkins University & Medicine (“Johns Hopkins”) is exploring creating an independent, professional police department to augment its existing safety and security operation. Currently, the majority of our campus public safety contingent serves to help deter crime by observing and reporting urgent needs, but lacks the capacity to intervene in unfolding crimes.*

*Creating a Johns Hopkins Police Department (JHPD) would allow the university to build a campus public safety contingent that can provide more visible deterrence and respond more quickly and effectively to crimes and campus-specific threats like active shooter incidents. A sworn police department would be able to stop and arrest persons engaged in crimes on Johns Hopkins properties, use lights and sirens, access law enforcement data bases, and communicate with local law enforcement through shared radio frequencies. It would also afford Johns Hopkins a trained police contingent that is prepared to meet the unique needs of a university community, all in coordination with city, state and federal law enforcement partners.*

*We see this as a critical and unique opportunity to build a model university police department that reflects contemporary best practices in community policing, and upholds in every way the core values of our institution – including an unwavering commitment to equity and inclusion, a deep respect for freedom of expression, and a meaningful connection to our neighbors – undergirded by our commitment to transparency and accountability.*

#### **Core Institutional Values Informing JHPD Approach to the Use of Arrest and Alternatives**

Preserving and improving human life is a central mission of Johns Hopkins, as reflected in its provision of patient care, its research into potential cures, and its pursuit of policy interventions that strengthen society. In keeping with this mission, it will be the unambiguous policy of the JHPD to act only in ways that value and preserve human life, reduce harm, and provide law enforcement alternatives.

Johns Hopkins also understands that effective public safety relies on strong mutual trust between citizens and police and a shared perception of procedural fairness. If JHPD officers are authorized to exercise certain powers – the powers to stop, search, detain, arrest, and use force – it is paramount that the Johns Hopkins and surrounding communities trust that JHPD officers will use those powers appropriately, and that they will be held properly accountable if those powers are abused or misused.

Johns Hopkins is also committed to the rule of law and the protection of human rights and civil liberties. All JHPD conduct must reflect that commitment, and it will be the obligation of JHPD officers to intervene to stop officers who are treating others in ways that violate the law or

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University policy. All arrests made by officers of the JHPD will be based on the principles of probable cause, and carried out in accordance with law and University policy.

### **Rationale for General Orders on Use of Arrest at Johns Hopkins**

If a JHPD officer has probable cause to arrest an individual for a crime, it is critical that her conduct, from the moment of arrest until that individual's release or transfer into another's custody, be governed by appropriate training and protocols. This is to ensure that arrested individuals are treated fairly and in ways that maintain trust between citizens and the JHPD.

Furthermore, through community partnerships, JHPD will seek diversion opportunities whenever possible to limited negative impacts associated with involvement in the criminal justice system. This means identifying diversion opportunities for low level offenses with underlying causes that are often better addressed by public health tools and protocols.

### **Best Practices that Will Be Adopted by the Johns Hopkins Police Department**

The University has surveyed policies and general orders for arrest processes and procedures at municipal and county police departments and peer university police departments across the country, and has also consulted the work of leading research and advocacy organizations involved in policing, both from the law enforcement perspective and the citizen perspective. The following best practices are ones that uphold Johns Hopkins' core institutional values and therefore will be incorporated into the JHPD general orders for arrest processes and procedures:

#### **Alternatives to Arrest and Arrest Practices in General**

- JHPD will avoid arrests of youth whenever possible, and will develop programs and protocols that aim to process youth away from the formal justice system (see below);
- JHPD will de-prioritize arrests for low-level offenses, and will work with community and university partners on the development of diversion resources/protocols that direct individuals to supportive services and case management;
- In each interaction that may lead to arrest, JHPD will take a harm reduction approach, which treats arrest as only one of many options and not the first resort;
- JHPD officers will act professionally, respectfully, and with restraint, including expressing appreciation for the citizen's cooperation;
- Whenever possible, and for all people who come into contact with the JHPD – Hopkins affiliates and non-affiliates alike – JHPD officers will be required to consider alternatives to arrest, like warnings or civil citations or referrals to Student Affairs, when alternatives will suffice as well as, or better than, an arrest;
  - In determining these non-arrest alternatives, officers will take into consideration the alleged victim, the alleged perpetrator, and the nature of the offense;
  - Officers will also abide by [Maryland's Good Samaritan Law](#);

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- In no circumstances will JHPD provide preferential treatment to an individual based on their affiliation or non-affiliation with Johns Hopkins;
- JHPD will prohibit the use of arrest quotas and instead utilize officer performance metrics and incentives that support public safety, community policing, and health-oriented objectives;
- JHPD officers will be responsible for the safety and health of arrestees in their custody;
- Officers will ensure, to the best of their capabilities, that arrestees receive necessary medical attention *prior to* arrest processing;
- JHPD will collect, analyze, report data, and investigate on all in-custody injuries

### **Additional Arrest Practices Specific to Youth**

- JHPD will avoid arrests of youth whenever possible, and will develop programs and protocols that aim to process youth away from the formal justice system;
  - In responding to issues involving youth (both students and those not affiliated with Hopkins), JHPD will seek to develop a network of youth-oriented community services providers so that officers can respond with alternatives to arrest that address concerning behavior without court involvement when appropriate;
  - Officers will also abide by the university's [Amnesty and Responsible Action Protocol](#) when responding to a call for assistance with a Hopkins student's medical emergency and/or mental health crisis;
- Officers will be encouraged to consider the severity of the offense, and any mitigating circumstances, before electing, as a last resort, to arrest a juvenile;
- Officers will not be under any obligation to file charges against youth who are taken into custody;
- If arrested, arresting officers will attempt to notify the parents, guardians, or adults responsible for the youth, as soon as practical, of the fact that their child has been taken into custody;
- Arrested youth will be taken to the Baltimore City Juvenile Justice Center;
- The Baltimore City Juvenile Justice Center will try to release the arrested youth to a parent, guardian, or responsible adult, but if no parent, guardian, or responsible adult is available to take custody of an arrested youth, that individual will be taken to shelter care facilities or juvenile detention facilities, subject to the instructions of Maryland Department of Juvenile Services personnel

### **Effectuating an Arrest**

- Allow officers to make an arrest only when warranted by probable cause and then only in the manner prescribed in the applicable general order;
- Require officers to ensure the safety of all individuals involved;
- If force is required to effectuate an arrest, despite efforts to de-escalate and after all reasonable alternatives to force have been exhausted, then officers will use the minimal

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amount of force needed; excessive force will not be tolerated (*see* “De-escalation and Use of Force” issue paper);

- Require officers to minimize the amount of time a non-compliant arrestee spends on his/her stomach;
- Prohibit officers from “hog-tying” arrestees, i.e. placing them face down on the ground, with arms handcuffed behind the back, feet hobbled and a strap hooked from the hobbled feed to the handcuff chain;
- Require officers to notify a superior of each arrest, and to document each arrest using a standard form, including each arrest that involved a subsequent release, as soon as practicable after the arrest and no later than the end of their shift;
- Require officers to immediately release a person if they discover, after arrest, that probable cause no longer exists

### Transporting Arrestees

- Depending on the circumstances, arrestees will either be transported by the JHPD to their station or the Baltimore Central Booking & Intake Center, or transported to Central Booking by a BPD prisoner transport vehicle
- When making decisions about transport and custody, require officers to deem an individual’s gender to be male or female based on the individual’s gender identity;
- Require transporting officers to maintain visual contact with arrestees during transport;
- Prohibit transporting officers from intentionally harming or jostling arrestees during transport (e.g., giving a “rough ride”);
- Prohibit transporting officers from intentionally diverting, delaying, or otherwise interrupting an arrestee’s transport;
  - Officers interrupting arrestee transports for any reason will notify dispatch of their mileage, location, and reason for the interruption;
- Prohibit transporting officers from taking other police actions unless an emergency situation arises and assistance can be rendered without endangering arrestees or compromising their security;
- Require transporting officers to transmit their mileage and destination to dispatch at the beginning of their transports, and to transmit their arrival and mileage information to dispatch at the end of their transports (all JHPD radio communications will be recorded);

### Care for Persons in JHPD Custody

- When force is needed to effectuate the arrest, require officers – once the individual is secured or in custody – to further de-escalate in order to increase compliance and to address injuries the arrestee may have sustained;
- All uses of force incident to arrest that involve injury to the arrestee will be investigated by Internal Affairs and evidence will be preserved;
- When arrestees sustain injuries needing medical treatment, ensure that transporting officers either call an ambulance or transport the arrestees to medical facilities;

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- Require officers to attempt to obtain copies of arrestees' discharge summaries whenever emergency department medical records are prepared for them;
- Require transporting officers to make every reasonable and prudent effort to expedite arrestee transport, processing, and delivery to receiving personnel or agencies;
- Require transporting officers to notify receiving personnel or agencies of an arrestee's special transportation requests

### **Treatment of Arrestees' Property**

- An arrestee's non-evidentiary property will be inventoried and either immediately returned to the arrestee upon their release from custody, or turned over to the receiving facility

### **Transparency / Recordkeeping**

- All arrests, including those where a person is released without charge, will be documented on the appropriate arrest and event reports – arrest reports will be completed by the end of the tour of duty;
- Copies of the Charging Documents will be included with the event reports

### **Training**

- Require training on alternatives to arrest and diversion protocols for working with service provider partners;
- Require training on effective communication with youth and supports available to youth at Johns Hopkins and in Baltimore;
- Require training on the constitutional and state rights of persons subject to detention or arrest, as prescribed by the 4th Amendment of the U.S. Constitution;
- Require training in procedural justice in police-citizen interactions;
- Require training in preventing racial profiling and combatting implicit bias, which can impact decisions about whom to arrest and how the arrest is carried out;
- Require training in cultural competence and LGBTQ competence;
- Require training in crisis intervention, including detecting behavior that calls for a medical and/or mental health intervention rather than an arrest;
- Require training in de-escalation techniques, including effective communication with the person perceived to be resisting arrest;
- Require training on the proper application of handcuffs and other physical restraints (e.g., flex-cuffs)

### **Works Consulted**

- *Selected police departments whose policies/G.O.s were reviewed:*

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- Seattle Police Department, General Order on Arrest, Search and Seizure (Feb. 2016)
- Seattle Police Department, General Order on Bias-Free Policing (July 2018)
- Howard County Police Department, General Order on Arrest Procedures (Oct. 2012)
- Montgomery County Police Department, Processing Arrested Persons (Jan. 2004)
- Baltimore Police Department, consent decree drafted Policy on Quality of Life Offenses (April 2018)
- Baltimore Police Department, consent decree drafted Policy on Warrantless Arrest Procedures and Probable Cause Standard (Oct. 2018)
- Coppin State University Police Department, Manual of Rules and Procedures
- Morgan State University Police Department, Arrest Policy (undated)
- University of Baltimore Police Department, Investigative Detentions and Field Interviews by UB Police (Aug. 2010)
- University of Maryland Baltimore County Police Department, Guide for Completing Criminal, Juvenile and Civil Citations (June 2018)
- University of Maryland Baltimore County, Juvenile Arrest & Detention (June 2018)
- University of Maryland Baltimore County Police Department, Physical Arrest Procedures (June 2018)
- University of Maryland, Department of Public Safety, Manual of Rules and Procedures, Arrest Procedures (Oct. 2016)
- Yale University Police Department, General Order on Arrests (Mar. 2012)
- Yale University Police Department, General Order on Juvenile Matters (Oct. 2014)
  
- ***Selected organizations consulted:***
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  - Council of State Governments Justice Center, “[Trauma-Informed Policing: Addressing the Prevalence of Trauma in Law Enforcement Encounters](#)” (Aug. 2017)
  - International Association of Campus Law Enforcement Administrators, “[IACLEA Accreditation Standards Manual](#)” (May 2018)
  - International Association of Chiefs of Police, “[Citation in Lieu of Arrest: Examining Law Enforcement’s Use of Citation Across the United States](#)” (April 2016)
  - International Association of Chiefs of Police, “[Model Arrest Policy](#)” (July 2018)
  - National Initiative for Building Community Trust & Justice (multiple sources)
  - National Institute of Justice, “[Race, Trust and Police Legitimacy](#)” (last modified July 2016)
  - Office of Juvenile Justice and Delinquency Prevention, “[Diversion from Formal Juvenile Court Processing](#)” (2017)

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- Open Society Foundations, "[Police & Harm Reduction](#)" (2018)
- Police Executive Research Forum, "[Executive Guidebook: Practical Approaches for Strengthening Law Enforcement's Response to Sexual Assault](#)" (2018)
- President's Task Force on 21<sup>st</sup> Century Policing, "[Final Report](#)" (May 2015)
- The Sentencing Project, "[Policy Brief: Racial Disparities in Youth Commitments and Arrests](#)" (2016)
- U.S. Department of Justice, Community Oriented Policing Services (COPS), "[Building Relationships of Trust: Recommended Steps for Chief Executives](#)" (2014)
- U.S. Department of Justice, COPS, "[Strengthening the Relationships between Law Enforcement and Communities of Color](#)" (2014)
- U.S. Department of Justice, COPS, "[How to Support Trust Building in Your Agency](#)," *Police Perspectives: Building Trust in a Diverse Nation No. 3* (2016)
- U.S. Department of Justice, COPS, "[Gender, Sexuality, and 21<sup>st</sup> Century Policing: Protecting the Rights of the LGBTQ+ Community](#)" (2017)
- Yale Law School Justice Collaboratory, "[Principles of Procedurally Just Policing](#)" (Jan. 2018)
  
- **Selected academic articles consulted:**
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  - Brown, R. A. and James Frank, "[Race and officer decision making: Examining difference in arrest outcomes between Black and White officers](#)," *Justice Quarterly*, 23(1): 96–126 (Aug. 2006)
  - Chappell, Allison T., John M. MacDonald, and Patrick W. Manz, "[The Organizational Determinants of Police Arrest Decisions](#)," *Crime & Delinquency* 52(2): 287–306 (April 2006)
  - Charette, Y, Anne G. Crocker, and Isabelle Billette, "[Police encounters involving citizens with mental illness: use of resources and outcomes](#)," *Psychiatric Services* 65(4): 511–516 (April 2014)
  - Forman, James Jr., "[Community Policing and Youth as Assets](#)," 95 *Journal of Criminal Law and Criminology* 1 (2004-2005)
  - Green, Thomas M., "[Police as Frontline Mental Health Workers: The Decision to Arrest or Refer to Mental Health Agencies](#)," *International Journal of Law and Psychiatry* 20(4): 469–486 (Autumn 1997)
  - Kochel, T. R., David B. Wilson, and Stephen D. Mastrofski, "[Effect of Suspect Race on Officers' Arrest Decisions](#)," *Criminology*, 49(2), 473-512 (May 2011)
  - Liberman, Akiva, David S. Kirk, and KiDeuk Kim, "[Labeling Effects of First Juvenile Arrests: Secondary Deviance and Secondary Sanctioning](#)," Urban Institute Justice Policy Center (Oct. 2014)

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- Meares, Tracey L., “[The Good Cop: Knowing the Difference Between Lawful or Effective Policing and Rightful Policing—And Why It Matters](#),” 54 *William & Mary Law Review* 1865 (2013)
- Morabito, Melissa S., “[Horizons of Context: Understanding the Police Decision to Arrest People With Mental Illness](#),” *Psychiatric Services* 58(12): 1582–1587 (Dec. 2007)
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- Wood, Jennifer D. and Amy C. Watson, “[Improving Police Interventions during Mental Health-Related Encounters: Past, Present and Future](#)” *Policing and Society* 27(3):289-299 (Aug. 2016)
- **Selected statutory and case references:**
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  - Md. Code Ann., Criminal Proc. § 2-102, Authority of police officers – In general
  - Md. Code Ann., Criminal Proc. § 2-202, Warrantless arrests – In general
  - Md. Code Ann., Criminal Proc. § 4-101, Charge by citation
  - *Perez v. State*, 168 Md. App. 248 (2006)
  - *Odum v. State*, 156 Md. App. 184 (2004)
  - *Miranda v. Arizona*, 384 U.S. 436 (1966)
  - *McChan v. State*, 238 Md. 149 (1965)
  - *Silverstein v. State*, 176 Md. 533 (1939)